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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

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9 WILLIAM BRIDGE, individually and on behalf
10 of all others similarly situated,

11

Plaintiff,

12

v.

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CREDIT ONE FINANCIAL, a Nevada
corporation, d/b/a CREDIT ONE BANK, N.A.,

14

Defendant.

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2:14-cv-1512-LDG-NJK

ORDER

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Defendant Credit One Bank, N.A. (“Credit One”) has filed a second motion to stay (#109),
17 compel arbitration (#110), and strike class claims (#111), or in the alternative, motion to disqualify
18 plaintiff Bridge as proposed class representative (#112), and dismiss consumer fraud/deceptive
19 trade practices claim (#113, opposition #116, reply #128). The court will address the motion to
20 compel arbitration as an initial matter, as that outcome may be determinative, at least for the time
21 being, of the other motions.

22

In this case, plaintiff Bridge generally alleges that Credit One deployed restricted auto-
23 dialing technologies to improperly conduct debt collection beyond the customers who had
24 consented to receive such calls. This, alleges Bridge’s amended class action complaint,
25 negligently and knowingly violated the Telephone Consumer Protection Act, and Nevada’s
26 Deceptive Trade Practices Act.

1 Bridge's mother was a Credit One account holder. In January 2014, she underwent surgery
2 and Bridge learned that her prognosis was not favorable. In addition to the emotional impact of
3 his mother's condition on Bridge, he was also concerned that he had no understanding of his
4 mother's finances in the event that she passed away. On January 18, 2014, after several days in
5 which he stayed in his mother's house while she was in the hospital, Bridge called Credit One's
6 toll-free automated account information system using his own cell phone and without his mother's
7 knowledge. Credit One's system allows callers to interact with its technology via a telephone
8 keypad. Upon reaching Credit One's automated account information system, a customer hears the
9 following automated message: "Welcome to Credit One Bank. Your account now includes an
10 automated 1% reward on gas purchases. Press 1 for English. . . . Please enter your sixteen digit
11 card number." When asked to do so, Bridge entered his mother's account number that he found
12 on her billing statement. After entering an account number, Credit one's system instructs the
13 following: "Please enter the last four digits of your social security number." Bridge entered the
14 last four digits of his mother's social security number, and was instructed to stay on the line while
15 Credit One accessed his mother's account information. After entering the correct validation
16 information, Bridge was able to access information related to the account, including the account
17 balance, delinquency status, and payment due dates.

18 Upon successful authentication of the account and social security information, the phone
19 number Bridge was using became associated with Bridge's mother's account. Bridge's mother's
20 account became delinquent, and calls were made to recover the debt. Bridge alleges that over 100
21 such calls were made to his cell phone number between January 2014 and March 2014. On or
22 about March 18, 2014, Bridge instructed a Credit One representative to stop calling his cell phone,
23 and no subsequent calls were made.

24 Credit One's standard Visa/MasterCard Cardholder Agreement, Disclosure Statement and
25 Arbitration Agreement ("cardholder agreement") provides the following:
26

COMMUNICATIONS: You are providing express written permission authorizing Credit One Bank or its agents to contact you at any phone number (including mobile, cellular/wireless, or similar devices) or email address you provide at anytime, for any lawful purpose. . . . Phone numbers and email addresses you provide include those you give to us, those from which you contact us or which we obtain through other means.

Credit One's cardholder agreement also contains the following arbitration provision:

Claims subject to arbitration include not only Claims made directly by you, but also Claims made by anyone connected with you or claiming through you, such as a co-applicant or authorized user of your account, your agent, representative or heirs, or a trustee in bankruptcy.

The cardholder agreement's arbitration provision further states:

Claims subject to arbitration include, but are not limited to, disputes relating to the establishment, terms, treatment, operation, handling, limitations on or termination of your account; any disclosures or other documents or communications relating to your account; any transactions or attempted transactions involving your account, whether authorized or not: billing, billing errors, credit reporting, the posting of transactions, payment or credits, or collections matters relating to your account.

In its motion to compel arbitration, Credit One asserts that Bridge should be bound by the cardholder agreement including the arbitration provision even though he is a non-signatory to the agreement. Credit One argues that non-signatories may be bound by arbitration agreements under ordinary contract and agency principles, and that non-signatories may assume the obligations contained in an arbitration clause where there is a sufficiently close relationship to justify it. Bridge argues that the cardholder agreement does not apply to him under any legal theory.

In determining whether parties have agreed to arbitrate a dispute, the court applies general state-law principles of contract interpretation, while giving due regard to the federal policy in

1 favor of arbitration by resolving ambiguities as to the scope of arbitration in favor of arbitration.
2 Mundi v. Union Security Life Ins. Co., 555 F.3d 1042, 1044 (9th Cir. 2009) (citations omitted).
3 The presumption in favor of arbitration, however, does not apply if contractual language is plain
4 that arbitration of a particular controversy is not within the scope of the arbitration provision. Id.
5 (citations omitted).

6 Generally, nonsignatories of arbitration agreements may be bound by the agreement under
7 ordinary contract and agency principles. Comer v. Micor, Inc., 436 F.3d 1098, 1101 (9th Cir.
8 2006). Federal courts have identified five theories pursuant to which an arbitration clause can be
9 enforced by or against a nonsignatory: (1) incorporation by reference, (2) assumption, (3) agency,
10 (4) veil piercing alter ego, and (5) estoppel. Id.

11 The court focuses on whether Bridge can be subject to the arbitration provisions of the
12 cardholder agreement between his mother and Credit One based on equitable estoppel. In Nevada,

13 Under a theory of estoppel, “[a] nonsignatory is estopped from refusing to comply with an
14 arbitration clause ‘when it receives a “direct benefit” from a contract containing an
15 arbitration clause.’”

16 Truck Insurance Exchange v. Swanson, 189 P.3d 656, 661 (Nev. 2008).

17 In analyzing whether a nonsignatory to a written agreement containing an arbitration clause
18 may be compelled by a signatory to the agreement to arbitrate, the Mundi court relied favorably on
19 Brantley v. Republic Mortgage Ins. Co., 424 F.3d 392 (th Cir. 2005). The Brantley court held that
20 “just as estoppel can apply against a signatory to an arbitration clause who sues a nonsignatory
thereto, it can also apply against a nonsignatory who sues a signatory. Id. at 628. In both
21 instances, the test is that a nonsignatory should be bound by an arbitration clause when its claims
22 against the signatory “arise[] from” the contract containing the arbitration clause. Id. (citation
23 omitted). The court must look to the complaint to determine whether the claims of a signatory
24 arise from the agreement in this case. The court finds that they do.
25

1 Bridge's amended complaint alleges that Credit One's telephone system was wrongfully
2 used to contact Bridge at his cell phone number. It is the cardholder agreement that gives Credit
3 One the authority "to contact you at any phone number (including mobile, cellular/wireless, or
4 similar devices) . . . you provide at anytime, for any lawful purpose. . . . Phone numbers and email
5 addresses you provide include those you give to us, those from which you contact us or which we
6 obtain through other means." Bridge alleges that he did not give written consent to Credit One to
7 call his cellular phone. However, he benefitted from the agreement by calling Credit One,
8 inputting his mother's validation information, and gaining access to his mother's financial
9 information. Bridge alleges that Credit One obtained his cell number through its use of automatic
10 number identification technology. He further alleges: "This technology permits an inbound call
11 center receiving calls from consumers, or companies utilizing [interactive voice response]
12 technology, to obtain the number from which a call is received, and update its records to add that
13 number to a particular account." The application of the technology upon which Bridge bases his
14 claims derives from cardmember agreements between customers and Credit One, which
15 agreements also contain the arbitration clause. In sum, Bridge is alleging that Credit One breached
16 its duties under the cardmember agreements and as a result violated the Telephone Consumer
17 Protection Act. In this situation, the court finds that Bridge's allegations arise from and relate
18 directly to the duties imposed on Credit One under its cardholder agreement with his mother, and
19 therefore, that arbitration should be compelled even though Bridge was not a signatory to the
20 agreement. See American Bankers Ins. Co. v. Long, 453 F.3d 623, 627-28 (4th
21 Cir. 2006) ("[E]stoppel is appropriate if in substance [the signatory's underlying] complaint [is]
22 based on the [nonsignatory's] alleged breach of the obligations and duties assigned to it in the
23 agreement." Therefore, to determine whether the claims are intertwined, the Court must look to
24 the duties breached . . . as alleged in the Complaint"). Accordingly,

THE COURT HEREBY ORDERS that Credit One's motion to compel arbitration (#110) is GRANTED.

THE COURT FURTHER ORDERS that Credit One's motion to stay (#109) is GRANTED. This action is hereby STAYED pending the outcome of arbitration.

THE COURT FURTHER ORDERS that, given the court's ruling on the motion to compel arbitration (#110), Credit One's motions to strike class claims (#111), to disqualify (#112), and to dismiss (#113) are DENIED without prejudice.

DATED this 31 day of March, 2016.

Lloyd D. George